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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91181145
Party	Defendant Amiga, Inc.
Correspondence Address	DARREN B. COHEN REED SMITH LLP 599 LEXINGTON AVE NEW YORK, NY 10022-6030 dcohen@reedsmith.com
Submission	Answer
Filer's Name	Meredith D. Pikser
Filer's e-mail	mpikser@reedsmith.com, dcohen@reedsmith.com, jtamarin@reedsmith.com, gshatan@reedsmith.com
Signature	/Meredith D. Pikser/
Date	01/16/2008
Attachments	Amiga - Answer to Consolidted Notice of Opposition.pdf (9 pages)(469826 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 78/940,417
For the Mark AMIGA
Published in the Official Gazette on October 9, 2007

In the Matter of Application Serial No. 78/940,426
For the Mark AMIGA (stylized)
Published in the Official Gazette on October 9, 2007

In the Matter of Application Serial No. 78/940,434
For the Mark "Boing Ball" Design
Published in the Official Gazette on October 9, 2007

In the Matter of Application Serial No. 78/942,544
For the Mark AMIGA ANYWHERE
Published in the Official Gazette on October 9, 2007

In the Matter of Application Serial No. 78/942,551
For the Mark AMIGA ENABLED
Published in the Official Gazette on October 9, 2007

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Hyperion VOF, d/b/a Hyperion	:	Consolidated Opposition No. 91181145
Entertainment VOF, a Belgian	:	
Vennootschap Onder Firma,	:	
	:	
Opposer	:	ANSWER TO CONSOLIDATED
	:	NOTICE OF OPPOSITION
-against-	:	
Amiga, Inc.,	:	
Applicant	:	

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Box TTAB- NO FEE
Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Applicant's Answer to Consolidated Notice of Opposition

Applicant, Amiga, Inc., for its answer to the Consolidated Notice of Opposition filed by Hyperion VOF, d/b/a Hyperion Entertainment VOF, against application for registration in International Class 9 of Applicant's trademarks AMIGA, Serial No. 78/940,417, AMIGA (stylized), Serial No. 78/940,416, "Boing Ball" Design, Serial No. 78/940,434, AMIGA

ANYWHERE, Serial No. 78/942, 544, and AMIGA ENABLED, Serial No. 78/942,551, all published in the Official Gazette on October 9, 2007, pleads and answers as follows:

1. Answering Paragraph 1 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.
2. Answering Paragraph 2 of the Notice of Opposition, Applicant admits the allegations thereof.
3. Answering Paragraph 3 of the Notice of Opposition, Applicant admits the allegations thereof.
4. Answering Paragraph 4 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.
5. Answering Paragraph 5 of the Notice of Opposition, Applicant denies the allegations thereof, except admits that on or about November 3, 2001, Amiga Washington entered into an (OEM) License and Software Development Agreement dated November 3, 2001 with Hyperion and Eyetech, which are expressly identified in the agreement as having partnered with each other and which are defined collectively as the "Amiga One Partners." A true and correct copy of what Hyperion has alleged is that agreement is attached to the Notice of Opposition as Exhibit A.
6. Answering Paragraph 6 of the Notice of Opposition, Applicant denies the allegations contained therein and respectfully refers the Board to the referred agreement for its true and complete terms.
7. Answering Paragraph 7 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof, except specifically denies that any use by Hyperion amounts to bona fide trademark use in commerce that grants Hyperion rights in any AMIGA mark.
8. Answering Paragraph 8 of the Notice of Opposition, Applicant admits that it is the owner of the intent-to-use application for the mark "Boing Ball" assigned Serial No. 78/940,434, that the referenced mark is not specifically referenced anywhere in the referenced agreement, denies the remaining allegations thereof, and respectfully refers the Board to the referenced agreement for its true and complete terms.
9. Answering Paragraph 9 of the Notice of Opposition, does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof, except admits that the Boing Ball is a well-known mark associated with AMIGA products.

10. Answering Paragraph 10 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.

11. Answering Paragraph 11 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.

12. Answering Paragraph 12 of the Notice of Opposition, Applicant specifically denies that Hyperion has prior rights in the Boing Ball mark compared to Applicant and does not have sufficient knowledge or information to form a belief as to the remaining allegations contained therein and accordingly denies those allegations.

13. Answering Paragraph 13 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof.

14. Answering Paragraph 14 of the Notice of Opposition, Applicant denies the allegations contained therein and respectfully refers the Board to the referenced agreement for its true and complete terms.

15. Answering Paragraph 15 of the Notice of Opposition, Applicant denies the allegations contained therein.

16. Answering Paragraph 16 of the Notice of Opposition, Applicant denies the allegations contained therein.

17. Answering Paragraph 17 of the Notice of Opposition, Applicant states that it is impossible to respond because the allegation assumes that Amiga Washington was insolvent, and this assumption is not correct. On that basis, Applicant denies the allegations contained therein.

18. Answering Paragraph 18 of the Notice of Opposition, Applicant states that it is impossible to respond because the allegation assumes that Amiga Washington was insolvent, and this assumption is not correct. On that basis, Applicant denies the allegations contained therein.

19. Answering Paragraph 19 of the Notice of Opposition, Applicant denies the allegations contained therein as to “the contract purported to relate to the assignment of Amiga Washington’s rights under the November 3, 2001 Agreement,” but admits that there was an agreement entered into on April 24, 2003 by Hyperion and Itec LLC and respectfully refers the Board to the referenced agreement for its true and complete terms.

20. Answering Paragraph 20 of the Notice of Opposition, Applicant denies the allegations contained therein on the grounds that that no such consent was required and that Hyperion as one of the Amiga One Partners, bound Eyetech by its actions.

21. Answering Paragraph 21 of the Notice of Opposition, Applicant denies the allegations contained therein and respectfully refers the Board to the referenced agreement for its true and complete terms.

22. Answering Paragraph 22 of the Notice of Opposition, Applicant denies the allegations contained therein.

23. Answering Paragraph 23 of the Notice of Opposition, Applicant denies the allegations contained therein and specifically denies that Amiga Washington was insolvent.

24. Answering Paragraph 24 of the Notice of Opposition, Applicant denies the allegations contained therein and specifically denies that Amiga Washington's contractual rights were transferred in the Itec Contract.

25. Answering Paragraph 25 of the Notice of Opposition, Applicant denies the allegations contained therein.

26. Answering Paragraph 26 of the Notice of Opposition, Applicant denies the allegations contained therein.

27. Answering Paragraph 27 of the Notice of Opposition, Applicant denies the allegations contained therein.

28. Answering Paragraph 28 of the Notice of Opposition, Applicant denies the allegations contained therein.

29. Answering Paragraph 29 of the Notice of Opposition, Applicant does not have sufficient knowledge or information to form a belief as to the allegations contained therein and accordingly denies the allegations thereof and respectfully refers the Board to whatever actual statements are referenced therein for their true and complete content.

30. Answering Paragraph 30 of the Notice of Opposition, Applicant denies the allegations contained therein.

31. Answering Paragraph 31 of the Notice of Opposition, Applicant denies the allegations contained therein, and specifically denies that such consents were required, and respectfully refers the Board to the referenced agreements for their true and complete terms.

32. Answering Paragraph 32 of the Notice of Opposition, Applicant denies the allegations contained therein and respectfully refers the Board to the Amiga Washington/KMOS Contract for its true and complete content.

33. Answering Paragraph 33 of the Notice of Opposition, Applicant denies the allegations contained therein.

34. Answering Paragraph 34 of the Notice of Opposition, Applicant denies the allegations contained therein.

35. Answering Paragraph 35 of the Notice of Opposition, Applicant denies the allegations contained therein, and respectfully refers the Board to the referenced agreement for its true and complete terms.
36. Answering Paragraph 36 of the Notice of Opposition, Applicant denies the allegations contained therein, and respectfully refers the Board to the referenced agreement for its true and complete terms.
37. Answering Paragraph 37 of the Notice of Opposition, Applicant denies the allegations contained therein.
38. Answering Paragraph 38 of the Notice of Opposition, Applicant denies the allegations contained therein.
39. Answering Paragraph 39 of the Notice of Opposition, Applicant denies the allegations contained therein.
40. Answering Paragraph 40 of the Notice of Opposition, Applicant denies the allegations contained therein.
41. Answering Paragraph 41 of the Notice of Opposition, Applicant denies the allegations contained therein.
42. Answering Paragraph 42 of the Notice of Opposition, Applicant denies the allegations contained therein.
43. Answering Paragraph 43 of the Notice of Opposition, Applicant denies the allegations contained therein and denies that Opposer is entitled to such relief, or any other relief.
44. Answering Paragraph 44 of the Notice of Opposition Applicant denies the allegations contained therein, except admits that it asserts rights to the mark AMIGA, Serial No. 78/940,417 and 78/940,426 and the marks AMIGA ANYWHERE, Serial No. 78/942,544 and AMIGA ENABLED, Serial no. 78/942,551.
45. Answering Paragraph 45 of the Notice of Opposition, Applicant denies the allegations contained therein.
46. Answering Paragraph 46 of the Notice of Opposition, Applicant denies the allegations contained therein.
47. Answering Paragraph 47 of the Notice of Opposition, Applicant denies the allegations contained therein.
48. Answering Paragraph 48 of the Notice of Opposition, Applicant denies the allegations contained therein and denies that Opposer is entitled to such relief, or any other relief.
49. Answering Paragraph 49 of the Notice of Opposition, Applicant denies the allegations contained therein.
50. Answering Paragraph 50 of the Notice of Opposition, Applicant denies the allegations contained therein and denies that Opposer is entitled to such relief, or any other relief.

51. Answering Paragraph 51 of the Notice of Opposition, Applicant denies the allegations contained therein.

52. Answering Paragraph 52 of the Notice of Opposition, Applicant denies the allegations contained therein and denies that Opposer is entitled to such relief, or any other relief.

53. Answering Paragraph 53 of the Notice of Opposition, Applicant denies that Amiga Delaware merely “claims to be a successor in interest” to the trademark rights of Amiga Washington and avers that Amiga Delaware is, among other things, the successor in interest to Amiga Washington’s trademark rights.

54. Answering Paragraph 54 of the Notice of Opposition, Applicant denies the allegations contained therein.

55. Answering Paragraph 55 of the Notice of Opposition, Applicant denies the allegations contained therein.

56. Answering Paragraph 56 of the Notice of Opposition, Applicant denies the allegations contained therein.

57. Answering Paragraph 57 of the Notice of Opposition, Applicant denies that Opposer is entitled to such relief, or any other relief.

58. Answering Paragraph 58 of the Notice of Opposition, Applicant denies the allegations contained therein.

59. Answering Paragraph 59 of the Notice of Opposition, Applicant denies the allegations contained therein.

60. Answering Paragraph 60 of the Notice of Opposition, Applicant denies that Opposer is entitled to such relief, or any other relief.

61. Answering Paragraph 61 of the Notice of Opposition, Applicant denies the allegations contained therein.

62. Answering Paragraph 62 of the Notice of Opposition, Applicant denies the allegations contained therein.

63. Answering Paragraph 63 of the Notice of Opposition, Applicant denies that Opposer is entitled to such relief, or any other relief.

64. Answering Paragraph 64 of the Notice of Opposition, Applicant denies the allegations contained therein.

65. Answering Paragraph 65 of the Notice of Opposition, Applicant denies the allegations contained therein.

66. Answering Paragraph 66 of the Notice of Opposition, Applicant denies the allegations contained therein.

67. Answering Paragraph 67 of the Notice of Opposition, Applicant denies the allegations contained therein.

68. Answering Paragraph 68 of the Notice of Opposition, Applicant denies the allegations contained therein.

69. Answering Paragraph 69 of the Notice of Opposition, Applicant denies the allegations contained therein that the granting of the registrations to Amiga Delaware would be a source of damage and injury to Hyperion.

70. Answering Paragraph 70 of the Notice of Opposition, Applicant denies that Opposer is entitled to such relief to any part thereof, or any other relief.

FIRST AFFIRMATIVE DEFENSE

71. Applicant affirmatively alleges that Opposer lacks standing to bring the claims alleged herein as, inter alia, any trademark rights Opposer claims to have were derived from one or more license agreements and/or Opposer failed to establish any bona fide trademark rights in any of the AMIGA marks.

SECOND AFFIRMATIVE DEFENSE

72. Applicant affirmatively alleges that to the extent that Opposer is claiming rights under any agreement, it has failed to plead that it has performed all of its obligations thereunder and, in fact, has failed to perform all of its obligations thereunder.

THIRD AFFIRMATIVE DEFENSE

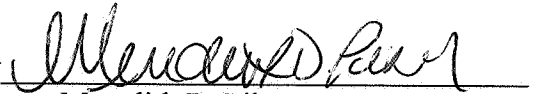
73. Applicant affirmatively alleges that Opposer is guilty of unclean hands.

In view of the foregoing, Applicant, contends that this Opposition is groundless and baseless in that Opposer has not shown wherein it will be, or is likely to be, damaged by the registration of Applicant's trademarks.

Dated: New York, New York
January 16, 2008

Respectfully submitted,

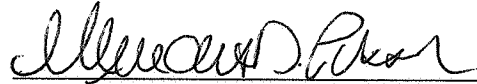
REED SMITH LLP

By 

Meredith D. Pikser
Attorney for Applicant
599 Lexington Avenue
New York, New York 10022
212-521-5432

Certificate of Service

I hereby certify that a copy of the foregoing Applicant's Answer to Notice of Opposition was mailed first-class mail postage prepaid to 2025 First Avenue, Suite 440, Seattle, Washington 98121, to the attention of William A. Kinsel, Esq., Kinsel Law Offices, PLLC, attorneys for Opposer this 16th day of January 2008.

A handwritten signature in black ink, appearing to read 'Meredith D. Pikser', written over a horizontal line.

Meredith D. Pikser
Attorney for Applicant